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Carpenter v. Syrett : Brief of Respondent

Utah Supreme Court

H. D. Lowry; Clarence C. Nelson; Attorneys for Respondent;

CASE NO. 6202

In the Supreme Court of the State of Utah

ANNIE M. CARPENTER,
Appellant,

-vs-

RUBY SYRETT,
Respondent.

Respondent's Brief

Appeal from the Sixth Judicial District Court, in and for Garfield County, State of Utah
Honorable Henry D. Hayes, Judge

H. D. LOWRY,
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In the Supreme Court
of the State of Utah

ANNIE M. CARPENTER,
Appellant,

-vs-

RUBY SYRETT,
Respondent.

Respondent's Brief

STATEMENT OF CASE

This action was commenced by the appellant against the respondent to recover damages for personal injuries sustained by appellant resulting from a fall down the stairway leading from the second story to the ground floor of the building owned and operated by respondent, known as Ruby's Inn, which is located about four miles north of Bryce Canyon in Garfield County, State of Utah.

The inn is a two story building with a stairway leading from the lobby to the second floor. The stairs leading from the lobby go north for a few steps, then

run east to the landing on the second floor, there being more steps from the landing to the top than from the lobby to the landing. The hall at the top of the stairs is approximately four feet in width and there are rooms along this hallway on either side at the top of the stairs. The stairs enter the hallway at right angles near the north end of the hall. The hall is so contructed that natural light lights the hall from a glass door on the north end of the hall and from a glass panel in the door in the south end of the hall, also what light comes into the hall from the rooms along the side of the hall. The stairs from the bottom to the top of the first story are lighted by natural light from the lobby of the inn. The electric lights were turned out part of the time during the day because they were not necessary, but when the electric lights were out in the daytime there was sufficient light on the stairs for a person to go up and down the stairs and the steps could be seen at such time.

From the 21st to the 25th day of August, 1937, the appellant was a registered guest at said inn. On the 25th day of August, 1937, at about 8:30 A. M. appellant left her room on the second floor and walked along the hall in a northerly direction to the stairs. When the plaintiff started down the stairs she fell and sustained severe injuries.

The appellant had been ill and remained in bed the entire day and night prior to the accident and on the morning of the accident she went to the head of the stairs and started down without stopping or looking.

The appellant had never noticed the lighting in the hall or stairs and on the morning in question she did not see any electric lights burning in the hall.

The appellant's claim for damages against the respondent is based wholly on the theory that the respondent negligently caused or let the light go out thereby causing the appellant to fall and sustain the injuries complained of. The respondent maintained that there was no evidence of negligence in the maintenance and operation of the electric lighting system, nor that appellant's injury was in any way a result of respondent's negligence, and that there was no showing that electric lights were necessary at the time of the accident. The respondent also contends that the appellant was guilty of contributory negligence.

ARGUMENT

The respondent contends that the court was under a duty to grant the defendant's motion for a non-suit for three reasons:

1. The appellant has failed to show that the defendant was under any duty to maintain electric lights

in the hall or on the stairs at the time the injuries were sustained by the plaintiff.

2. The appellant has failed to show or prove any causal connection between the injuries suffered and the negligence of the plaintiff.

3. The appellant was guilty of contributory negligence.

PROPOSITION NUMBER ONE:

The respondent was not under any duty to maintain electric lights on the stairs or in the hall at the time the appellant fell and suffered the injuries complained of.

An innkeeper is not an insurer of the safety of his guests, but must exercise reasonable care for their safety, comfort, and entertainment.

Quinn vs. Utah Gas and Coke Co., 42 Utah 113, 129 Pac. 362.

32 C. J. 561, Sec. 69.

Baker et al, vs. Dallas Hotel Company, 73 Fed. 2nd. 825.

DeHoney vs. Harding, 300 Fed. 696.

Applying that rule, let us consider the evidence with respect to the respondent's duty to maintain electric lights at the time of the appellant's fall.

Art L. Carpenter, a witness for the plaintiff, and incidentally a son of the appellant, and a discharged employee of the respondent testified in regard to the condition of the light in the hall and on the stairs as follows: That the stairs were dark without the use of artificial light, but that in the daytime he ascended and descended the stairs without difficulty and that he could see where he was going. (Tr. 58, Ab. 16) and that there were doors with glass panels at the north and the south end of the hall (Tr. 55, Ab. 14) that the lights from the lobby were sufficient to light the lower part of the stairs, and that there was nothing to obstruct this light up to the second floor level, thus leaving the stairs lighted by natural light from the lobby of the inn with the exception of those steps lying in the shadow of the floor of the second story. (Tr. 59, 60, Ab. 16)

Maiben Johnson, a witness for the appellant and the former mechanic in charge of the lighting system testified as follows in regard to the condition of the lighting on the stairs.

Q. Were you on those stairs when there were no electric lights on?

A. Yes sir.

Q. What was the condition of the light at that time?

A. Well the light from the top down as near as I can remember is better than the light from

the bottom up, for the reason that the light from the lobby shows in from the bottom, and coming up the shadow of your person naturally abstracts some of the light, but I have gone up there as fast as I could walk and go down and there wasn't any light.

Q. And were you there when the electric lights were not on?

A. Yes sir.

Q. What could you see in the way of visibility when the electric lights were not on, on the stairs?

A. I could distinctly see every step from the top down without any difficulty. (Tr. 79, 80, 81, Ab. 24, 25.)

He also testified that the lights were turned out in the daytime when they were not necessary to run appliances. (Tr. 82, Ab. 25.)

The evidence as above referred to shows that the stairs were sufficiently well lighted by means of natural light to eliminate any necessity or duty on the part of the respondent to maintain electric lights at the time of the accident for the following reasons:

1. The hall was lighted from both ends by reason of glass doors in either end. There was a sufficient amount of natural light coming from the glass doors at each end of the hall to adequately light the hall.

2. The stairs were lighted with light eminating from the lobby, to such an extent that each step was clearly visible.

3. That the stairs were so well lighted by natural light that it was not necessary to have the artificial lights on in the daytime.

The trial court, therefore, acted propertly in granting the non-suit upon this point for the reason that the appellant failed to show that the respondent was under any duty to maintain electric lights on the stairs at the time of the accident. but on the contrary, the appellant has affirmatively shown that he was not under a duty to maintain electric lights at such time and place.

PROPOSITION NUMBER TWO:

The appellant has failed to show or prove any causal connection between the injuries suffered and the negligence of the plaintiff.

> In an action for damages for negligence where the evidence entirely fails to connect the negligence with the fact of the accident, the court, should direct the jury that the plaintiff cannot recover.

Thompson on Trials—Vol. 2, 2nd Edition, Page 1257, Sec. 1678.

In the case of Goater vs. Klotz, a Pennsylvania case, reported at 124 Atl. 83, the court held as follows:

> "The court cannot take a case from the jury, as a matter of law, on the ground that no proper finding can be reached, unless the evidence is so conflicting that any verdict would be a mere guess, but where the burden is on plaintiff to establish certain facts, and his testimony is so contradictory as to present no basis for a finding, except as a mere conjecture, a non-suit is properly entered."

In the case of Quinn vs. the Utah Gas and Coke Company, reported in 42 Utah 113, 129 Pac. 362, and on page 119 of that case the court stated as follows:

> "When a plaintiff produces evidence that is consistent with an hypothesis that the defendant is not negligent, and also with one that he is, his proof tends to show neither."

The appellant, in the case at bar, has completely failed to show any causal connection between the respondent's negligence operation of the light plant and the injuries sustained by the appellant.

The appellant did not produce any direct evidence that the lights went out before or at the time of her fall, or that there were even any electric lights on in the hall or stairs at the time she started down the stairs.

Let us consider the evidence of the appellant with respect to this proposition. Mrs. Carpenter, the appellant, testified as follows: "The lights went out and everything

was befuddled." As shown from her testimony, (Tr. 118, Ab. 40) she had no idea whatsoever as to the lighting condition either before or after the accident. We quote her testimony as follows from page 118 of the transcript:

Q. But you did not see any globes burning any place did you?

A. I don't remember.

Q. But you saw the hall was lighted?

A. Yes sir.

Q. But you do not know where it came from?

A. No sir.

Q. Then so far as you know, it could have been coming from the sun's rays?

A. There might have been some light from the sun.

Q. You haven't been there when one door was open?

A. I do not know.

Q. Is it possible for one door to have been open and lighted the hall?

A. It might have been.

The appellant also testified, "That she was ill and remained in her bed the entire day and night prior to the accident," (Tr. 100, Ab. 32) "and she does not remember whether she could see the steps on the stairs." (Tr. 104, Ab. 34.)

The appellant testified that she came out of her room and across the hall to the head of the stairs as follows: "I put my hand on the post and went to take a step and the next thing I was rolling, the lights went out and everything was befuddled and everything went dark, and I found myself rolling (Tr. 91, Ab. 29) and (Tr. 104, Ab. 34) she said she saw the first step but she doesn't know whether she stepped on the step or not.

The question then arises as to the proximate cause of the fall.

In view of her testimony to the effect that she placed her hand on the post and saw the first step, it is obvious that the alleged lack of artificial light was in no wise the proximate cause of her fall, on the contrary the fact of her illness coupled with her confusion as to the cause of her fall, *the fact that she was befuddled and everything went dark* (italics supplied) can lead to but one conclusion, that her illness caused the fall or was the proximate cause of the fall. The court, therefore, did properly grant the motion for a non-suit on the ground that the appellant failed in her burden to prove

any causal connection between the injuries suffered and the alleged negligence on the part of the respondent.

PROPOSITION NUMBER THREE:

The appellant was guilty of contributory negligence.

A person who goes down and across a hotel hall and starts down the stairs without stopping and looking to see if the stairs are lighted or are dark and as a result falls and is injured is guilty of contributory negligence as a matter of law.

The testimony of the appellant herself on cross examination coupled with the physical facts, clearly establishes the fact that she was guilty of contributory negligence. In this connection, the court's attention is called to her testimony which was as follows:

She does not remember whether or not she could see the steps on the stairs. (Tr. 102, Ab. 34) She could not tell if she missed a step or not. (Tr. 104, Ab. 34) She had no recollection at all as to the second step because she did not stop and look as she started down the stairs. (Tr. 105, 106, Ab. 35.) As shown from her testimony we quote from the transcript page 105-106, Ab. 35:

Q. Do you recall looking to see whether there was any light at the bottom of the stairs as you started down?

A. I didn't have time to look.

Q. You stood there, didn't you?

A. I didn't stop, I placed my hand on the post and started to take the first step, and the lights went out.

Q. You didn't stop to see if there was any light coming up from the bottom of the stairs. xxx(Argument of Counsel)

Q. Your recollection is, as I understand it now, is you do not recall ever having looked on this particular morning to see if there was any light coming up from the bottom of the stairway. (no answer.)

Q. Do you understand the question?

A. Yes, I know I didn't look.

Q. You know you didn't look?

A. No sir.

Q. This is your recollection, that you did not look?

A. There was a light when I started and so I went out and all of a sudden the light went out and I did not have any time to look.

Q. Do you want the court and the jury to believe you came in a hurry out of this room and passed through that hall and put you hand on the post without stopping to look?

A. Why shouldn't I?

And (Tr. 107, Ab. 35) she testified:

Q. You didn't stop when you arrived at the top of the stairway did you?

A. No sir.

She testified (Tr. 108, Ab. 36) that she saw the first step, and (Tr. 116, Ab. 39) she says that it was so dark she could not see the step, and (Tr. 109, Ab. 36) she says she kept her eyes on her foot, but she testified (Tr. 106, Ab. 35) that she did not look down the stairs.

With the above review of evidence we submit that the plaintiff's testimony which can be no stronger than it is left on cross-examination, (Edwards vs. Clark, 96 Ut. 121; 83 Pac. (2d) 1021) shows that she was guilty of contributory negligence as a matter of law. The case of DeHoney vs. Harding reported in 300 Fed. 696, is in point. The plaintiff was a guest in the defendant's hotel assigned to a second story room. The accident occurred at eight o'clock in the morning when it was full daylight. The plaintiff left her room in a diagonal course, crossed the carpet runner and stepped of into a descending stairway, fell and received the injuries of which she complains. The descending stairway was shut off by a door at the lower end and therefore it was dark. The plaintiff had passed the descending stairs on numerous occasions and was acquainted with the surroundings. At the close of the evidence the defendant moved for a directed verdict upon the grounds that the evidence failed to establish negligence on the part of the defendant and

affirmatively showed that the plaintiff was guilty of contributory negligence. The motion was sustained, judgment entered for the defendant, and from that judgment the case was appealed, and was affirmed. The court in its opinion sets up the duties of an innkeeper towards his guests and gives an excellent definition of what is contributory negligence. On page 700 of the report the court holds as follows:

> "It appears from the evidence that the plaintiff, without any regard for her own safety, deliberately stepped from the lighted corridor into a darkened stairway, when, if she had used her eyes, she would have seen the stairway and avoided the accident. If she had left her room with her eyes closed, walked across the corridor, and stepped off into the stairway, no one would seriously contend that she was not guilty of negligence which contributed to her injury. Her own testimony shows she practically did this thing. It seems clear that plaintiff simply hurried out of her room, and, without paying any attention to where she was going and without using her senses, walked into this darkened stairway. We cannot escape the conclusion that plaintiff, as a matter of law, was guilty of negligence which contributed to the proximate cause of the injuries for which she seeks recovery. Zvanovich vs. Gagnon & Co., 45 Mont. 180, 122 Pac. 272; Stanwood v. Clancy, 106 Me. 72, 75 Atl. 293; 26 L. R. A. (N. S.) 1213; Massey v. Seller et al., 45 Or. 267, 77 Pac. 397; Johnson v. Ramberg, 49 Minn. 341, 51 N. W. 1043; Larned v. Vanderlinde, 165 Mich. 464, 131 N. W. 165; Sparks v. Siebrecht et al, 19 App. Div. 117,

45 N. Y. Supp. 993. Of course if the defendant was not guilty of actionable negligence, plaintiff's negligence was not, strictly speaking, contributory negligence, but in either event the lower court properly directed a verdict and the result is the same.

"The judgment is affirmed."

Other cases supporting the contention of the respondent in this respect are:

Cook vs. McGillicuddy, (Main) 75 At. 378.

Illinois Central Railroad Co. vs. Sanderson, 192 S. W. 869.

F. W. Woolworth Co. vs. Davis, 41 Fed. (2d) 342.

Johnson et al vs. Washington Route Incorporated, 209 Pac. 1100.

Hendricks vs. Jones, (Ga.) 111 S. E. 81.

Dempsey vs. Horton et al. (Mo.) 84 S. W. (2d) 621, page 625.

Medcraft vs. Merchants Exchange, S. F. 211 Cal. 404, 295 Pac. 822.

Sullivan vs. Northern Pac. Ry. Co. (Mont.) 94 Pac. (2d) 651.

Craft vs. Fordson Coal Co. (W. V.) 171 S. E. 886.

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Blankertz vs. Mack & Co. et al, (Mich.) 248 N. W. 889.

Rice vs. Goodspeed Real Estate Co., 254 Michigan 49; 235 N. W. 814.

We submit, therefore, that in light of the evidence and the law as above set forth, the appellant was guilty of contributory negligence as a matter of law, and therefore, the court was obliged to grant the respondent's motion for a non-suit.

Thompson on Trials—Vol 2, 2nd Edition, Sec. 1680, Page 1262:

> "Where an unavoidable inference of contributory negligence arises out of plaintiff's own evidence, or out of evidence which stands undisputed in the case, the plaintiff must be either non-suited, xxx If, however, it appears without any conflict of evidence from plaintiff's own case, or from cross-examination of his witness that he was guilty of contributory negligence approximately contributing to produce the injury, it would be the duty of the Court to take the case from the jury, by declaring as a matter of law, that the plaintiff cannot recover."

We respectfully submit therefore that the judgment should be sustained.

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